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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,320	05/23/2007	Michiel Christiaan Rombach	3135-062156	6948

28289 7590 06/25/2009  
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EXAMINER
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BOOTH, MICHAEL JOHN

ART UNIT	PAPER NUMBER
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3774

MAIL DATE	DELIVERY MODE
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06/25/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/589,320

Applicant(s)

ROMBACH, MICHIEL  
CHRISTIAAN

Examiner

MICHAEL J. BOOTH

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

In view of applicant arguments and amendments filed 05/05/2009, examiner hereby withdraws previous rejection. However, a new rejection is set forth below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

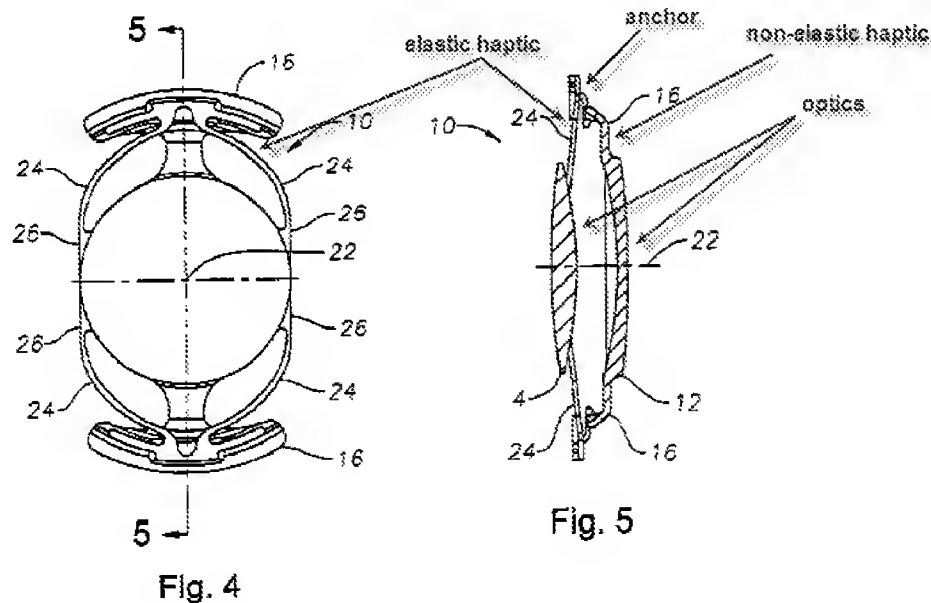
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

***Claims 13-20 and 24 are rejected under 35 U.S.C. 102(a) as being anticipated by Tran USPN 6,616,691.***

Tran discloses an intraocular lens system (10) comprising two optical elements (12, 14), two haptics (16, 24), and an anchor which connects the two haptics, as apparent from figure provide below. The optics are made of a foldable material (c3:L35) which allows flexibility and the optics may move in a perpendicular motion relative to the optical axis. The claim recites “can be shifted...perpendicular” and the lens of Tran is capable of shifting in this manner to meet the intended use limitations of the claim (even if shifted by an external force, such as surgeon’s fingers). See MPEP 2114 and 2173.05(g). The haptics are non-elastic (c4:L14-15) as Tran discloses the flexibility in the haptics exist at the hinge. From figure 4, the thickness of the haptic (24) is thin, thus providing some elastic feature, especially when compared to the other haptic. Thus, it is the examiners position that the haptics (24) are elastic and haptics (16) are non-

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elastic. If not apparent, see rejection below under 35 USC § 103. The optic (14) has some shape identified as "saddle shape", as broadly interpreted; the convex portion is seen in figure 5 below. The adjusting means exists via the hinge and anchor. The lens used to correct a disorder of the eye and is accommodating. When the optical elements move, the optical power of the system inherently changes. The lens capable of being implanted in the capsular bag.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

***Claims 13-20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tran USPN 6,616,691 as applied to the claims above, and further in view of Snyder US 2002/0091442.***

Tran discloses the invention substantially as claimed as discussed supra. It appears that Tran meets the limitation because and elastic and non-elastic may be broadly interpreted and the haptics of Tran could be described either way. However, if the limitation is not inherent to Tran, then Snyder teaches the use of rigid haptics (or non-elastic) for the purpose of supporting the lens (P29). Snyder further specifically teaches the use of semi-rigid or rigid and resilient materials, whereby the material should be "...compatible with the lens optic sufficient so that it may be anchored or staked to the optic..." and the use of plastic, metals, wires or fibers (P29). Thus, it

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would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lens system of Tran, to have a non-elastic or rigid member, as taught by Snyder, in order to support the lens system. Furthermore, both elastic and non-elastic haptics are commonly known to one of ordinary skill in the art and thus it would have been obvious to optimize the lens system to include both an elastic and non-elastic haptic in order to optimize the implant in the eye or other scenario where it may be desirable.

***Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tran USPN 6,616,691 as applied to the claims above, and further in view of Fiala et al USPN 6,120,148 "Fiala", or in the alternate, claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tran USPN 6,616,691 and Snyder US 2002/0091442 as applied to the claims above, and further in view of Fiala et al USPN 6,120,148 "Fiala".***

Tran and Snyder disclose the invention substantially as claimed. However, they fail to disclose the use of a diffractive surface, further providing a gradient index. Fiala discloses the use of a diffractive lens with gradients of a Fresnel-type lens (c7:L57-59) for the purpose of correcting vision. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lens of Tran and Snyder, to comprise a diffractive surface with a gradient index, as taught by Fiala, in order to correct vision.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. BOOTH whose telephone number is (571)270-7027. The examiner can normally be reached on Monday thru Thursday 8:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J. B./  
Examiner, Art Unit 3774  
June 11, 2009  
/William H. Matthews/  
Primary Examiner, Art Unit 3774